

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 18, 1999
at 9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Jodi Pauley, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 459, 3/12/1999; HB 566,
3/12/1999; HJR 5, 3/12/1999
Executive Action: None

HEARING ON HB 459

Sponsor: REP. ROBERT CLARK, HD 8, Ryegate

Proponents:

Gary Marbut, MT Shooting Sports Assoc.
Brian Judy, Montana Members of the National Rifle Assoc.

A.M. Elwell, Northwest Arms Collectors
Tom Farrenkopf, Citizens to Preserve the Second Amendment
John Appelt, Citizens to Preserve the Second Amendment
Kim Liles, Citizens to Preserve the Second Amendment
W.C. Hollenbaugh, Self
Leroy Patterson, Self
Frank Brisendine, Self
Mike Wallace, Self, Wallace Custom Grips

Opponents: None

Opening Statement by Sponsor:

REP. ROBERT CLARK, HD 8, Ryegate, said this bill allows for people other than residents of Montana who have a concealed weapon permit to carry a concealed weapon in Montana. Most of these people are law abiding citizens and have gone through more stringent regulations to get a concealed weapon permit than they do in Montana. He said on the bill there is a list of states where the permits would be recognized and they all require background checks.

Proponents' Testimony:

Gary Marbut, MT Shooting Sports Assoc., said in 1995 they set up a process for the Governor to have authority to negotiate reciprocity with other states. The bill required the Governor to set up an advisory council to advise the Governor on concealed weapon permit reciprocity. He said they spent about two years working on strategies for developing concealed weapon reciprocity with other states. He said there are about 12 states that would be recognized if this bill was passed. Montana residents would receive immediate reciprocity with about a dozen other states. People want to be able to use their concealed weapons in other states so they can provide themselves some protection. Rape, robbery, assault, etc. goes down if people are able to provide for their own personal protection. The most cost effective thing this state can do is to allow other states reciprocity and people to protect themselves, rather than building more prisons, hiring more police officers, etc. He read a quote from "More Guns, Less Crime."

Brian Judy, Montana Members of the National Rifle Assoc., said over the last 12 years on the state level there has been the move to impose laws on the states that would allow law abiding citizens to provide a means of self defense. Studies show that when law abiding citizens carry firearms, crime goes down. People who carry concealed weapons are less of a crime threat than the majority of the population. This bill would allow law abiding

citizens from other states to carry a weapon, with their permit, while they are in the state of Montana. Self defense should not stop at a border and there are a number of states that already allow Montanans to carry a concealed weapon, but there would be a lot more that would allow them to carry as soon as this law is passed.

{Tape : 1; Side : A; Approx. Time Counter : 9:16 a.m.}

A.M. Elwell, Northwest Arms Collectors, said there are 5600 permits issued in this state and they are some of Montana's finest citizens. They have gone through the background checks and have the best record of any licenced group of people in the state. He said only 19 of those 5600 permits have been revoked. He said when people cross a state line they don't grow fangs that are three feet long and drool and there is no reason why they shouldn't recognize this law.

Tom Farrenkopf, Citizens to Preserve the Second Amendment, rose in support of this bill.

John Appelt, Citizens to Preserve the Second Amendment, said it is only fair and just that other people be allowed to protect themselves in Montana as Montanans in turn should be able to protect themselves in other states. Responsible people should not have an impediment to the preservation of their personal safety.

Kim Liles, Citizens to Reserve the Second Amendment, said self protection is important.

W.C. Hollenbaugh, Self, said he has a concealed weapon permit and has never fired a shot in anger.

Leroy Patterson, Self, said he would like to have the opportunity to protect himself and would like to be able to carry a firearm when he travels.

Frank Brisendine, Self, said he travels a lot with his business and he would like to have the right to carry his weapon when he travels.

Mike Wallace, Self, Wallace Custom Grips, said when he travels it is nice to know that he can carry a weapon to protect himself in other states. He said he lived in Canada for 20 years and there is quite a difference living in a country where they cannot protect themselves because of gun control laws.

{Tape : 1; Side : A; Approx. Time Counter : 9:27 a.m.}

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. STEVE DOHERTY asked if by listing the states will they have to come back each session and make changes in their statutes.

REP. CLARK said this is not a big problem. If another state or numerous states decide to join, it would not be a big problem to add them legislatively or administratively.

SEN. DOHERTY said what if they drop the list and let the Attorney General or the Governor decide. **REP. CLARK** said this would not take care of the problem. The advantage to having the list is if a law enforcement officer is out there and he stops a vehicle and they have a concealed weapon permit that officer can call his dispatch and all they have to do is look at the list to see if they qualify. If they don't have that list it will be more difficult to find this information.

SEN. DOHERTY said they will have this information if they give them the initial list. Mechanically, let's set it up to where they don't have to keep revisiting this. **Gary Marbut** said the list is there for law enforcement so it is easy for them to deal with this issue. He said they came up with a list of 17 criterias that are similar to other states. He said he researched the laws of other states to compare with Montana's. It is almost an impossible job to determine what other state's laws are similar to Montana's law according to this list of 17 criteria. There are no other states that have laws that are similar to Montana's. Everyone agreed that a background check should be done amongst the states. He said he likes the idea of starting with a fixed list.

SEN. DOHERTY asked who decided that these states should be on this list and are similar to Montana's. **Gary Marbut** said these states all do criminal background checks before they issue permits. The Second Amendment Foundation and the NRA have both studied this and he compared his list to these two organizations and they were identical.

SEN. DOHERTY asked if any law enforcement agency looked at these states and determined if their laws are good enough to match Montana's. **Gary Marbut** said for two years they have had a committee working on SB 186 to revise laws on concealed weapon permits and this included the law enforcement agencies and they also discussed reciprocity.

CHAIRMAN GROSFIELD asked if the Governor's office and Attorney General's office would comment on the last question. **Judy**

Browning, Governor's office, said over the last 3 or 4 years they have discussed reciprocity. She said they received a researched list from Gary Marbut on the states and the types of requirements they had. If a law was passed like this, perhaps it would be better to leave out the list of states and let the Attorney General or law enforcement entity keep the list up to date. **Mike Batista, Department of Justice**, said they haven't looked at the list to see if those states require a background check. There has to be some mechanism to keep the list updated for local law enforcement either legislatively or administratively.

CHAIRMAN GROSFIELD said on page 2, line 15-17 it talks about criminal background checks, but it doesn't say what they do with it. It doesn't say if they have to have a clean check to get the permit. He asked what are the criteria? **Mike Batista** said this is addressed in other areas of the law, he said if they had a felony conviction they could not get the permit. **Gary Marbut** said the most restrictive part to getting a firearm is a person has to be eligible to hold a firearm under federal law. A person cannot get a concealed weapon permit if they don't meet the standards of the Federal Law.

SEN. RIC HOLDEN asked on page 2, line 25-26, what are they trying to do with this language. **Gary Marbut** said in the states it is up to some government official to proceed to the next step, this often does not get done because they are not interested in this issue.

CHAIRMAN GROSFIELD said it talks about a "Montana entity", but it doesn't say anything about a local government entity. He asked if "Montana entity" meant only state. **Valencia Lane** said it could be read either way.

CHAIRMAN GROSFIELD asked if they mean only a state entity. **Gary Marbut** said once the Legislature passes this bill and the Governor signs it, it won't require any further participation by anyone for it to become effective.

SEN. HOLDEN said his first impression of that language is they were going to have government involved in it after the statute was passed. **REP. CLARK** said it could be either state or local.

SEN. SUE BARTLETT said in the concealed weapon permit law, the sheriff shall conduct a criminal record and background check and do they need to conform to each other. **Mike Batista** said no, because they are both used to determine if someone should be allowed to get a permit. The information is difficult to obtain and law enforcement usually make their determination on a criminal history check.

SEN. BARTLETT asked if a criminal background check is commonly used language and well understood across the state by law enforcement. **Mike Batista** said criminal history check is more commonly used than a background check.

SEN. BARTLETT asked if they made it criminal history check would this work. **REP. CLARK** said background checks is a universal language and it is already addressed.

SEN. MIKE HALLIGAN asked if someone has a permit revoked is it physically taken back or is there a change in the computer. **Mike Batista** said it is both.

SEN. HALLIGAN asked if this is a standard among other states. **Mike Batista** said he didn't know for sure. **Gary Marbut** said most states probably do it like Montana in that there is physical possession of the permit and noting it in the state records. However, there are very few that are revoked, most of them are ones that have deceased.

CHAIRMAN GROSFIELD read lines 23 and 24, on page 2, and asked if law enforcement in all states have to have a concealed weapon permit to carry a concealed weapon or does this exclude law enforcement from having to carry a permit when they are in another state. **REP. CLARK** said most states do not require law enforcement officers to have a permit.

CHAIRMAN GROSFIELD said this language reads that a law enforcement person can't carry in Montana without a Montana permit. **REP. CLARK** said in the state of Vermont they don't require a permit for anybody. Therefore, they would not be able to carry a concealed weapon in Montana because they don't issue permits.

CHAIRMAN GROSFIELD asked why this bill keeps the advisory council in place. **Gary Marbut** said this was a request of law enforcement and they would provide council for consideration of all concealed weapon permits issued in Montana.

CHAIRMAN GROSFIELD asked if the council is funded by the General Fund. **Gary Marbut** said it is unfunded. He said if they wanted to include law enforcement from other states that don't have a permit, all they would have to do is insert "except for sworn law enforcement officers".

Closing by Sponsor:

REP. CLARK said a person, regardless of where they are from, must have that permit in their possession. If that permit is not a picture I.D. they cannot carry a weapon in the State of Montana. The advisory council may be a source of information for law enforcement or for the Legislature as to changes that are being made.

{Tape : 1; Side : B; Approx. Time Counter : 9:55 a.m.}

HEARING ON HB 566

Sponsor: **REP. MATT BRAINARD, HD 62, Missoula**

Proponents:

REP. BOB CLARK, HD 8, Ryegate
Gary Marbut, MT Shooting Sports Assoc.
Brian Judy, Montana Members of the National Rifle Assoc.
A.M. Elwell, Northwest Arms Collectors
Tom Farrenkopf, Citizens to Preserve the Second Amendment
John Appelt, Citizens to Preserve the Second Amendment
Kim Liles, Citizens to Preserve the Second Amendment
W.C. Hollenbaugh, Self
Leroy Patterson, Self
Frank Brisendine, Self
Mike Wallace, Wallace Custom Grips

Opponents: None

Opening Statement by Sponsor:

REP. MATT BRAINARD, HD 62, Missoula, said on page 2 this language deals with a way for the state to assist citizens in dealing with the national instant check system. He handed out some information on the Federal Registry. **EXHIBIT(jus61a01)** He said he wanted citizens of this state to have a permanent means of being able to purchase a weapon without having to go through the instant check every time they purchase a weapon. He said if a person goes to buy a gun they have to go through the instant check. He said if that person decides the next day to take the gun back because something is wrong with it, etc. they have to go through the instant check again. This is a waste of time when the individual has just been there. Section 2 deals with the right to sue firearms or ammunition manufacturers. He passed out a newspaper article from New York concerning this. **EXHIBIT(jus61a02)** He also passed out an article called "Freedom disappearing for Freedom

Arms". **EXHIBIT(jus61a03)** He explained this article. He explained page 4, line 18. He said there are many people in the military that do not have any safety certificates from their military training. People can get a concealed weapon permit if they have passed a hunter safety course or an NRA safety course, but if they have spent 20 years as a military small arms instructor, they cannot get the permit and this bill will take care of that. He said on page 5, line 18 they are striking out "social security number". Page 6, they are striking lines 27 and 28. He said there are no provisions in law that provide a permit should be issued or denied for personal reasons. One person's reason is as good as another and it doesn't need to be used. Page 7, line 26-28, deals with identification of the use of a military I.D. He explained page 8, line 14 and page 9 line 13-14.

{Tape : 1; Side : B; Approx. Time Counter : 10:06 a.m.}

Proponents' Testimony:

REP. BOB CLARK, HD 8, Ryegate, referred to the newspaper article from New York. **(EXHIBIT 2)** He said since this lawsuit, many states have adopted laws concerning the ability to be able to sue gun manufactures. This language has come from the state of Georgia to prevent these lawsuits from happening.

Gary Marbut, MT Shooting Sports Assoc., said they like the idea of this bill going to an interim study. He discussed some of the issues in the bill. He said they would like that when anybody goes to renew their driver's license they get the criminal record background check and if they are eligible to buy guns it will be marked on their driver's license. He said they are very supportive of the law preempting lawsuits against gun makers. These lawsuits are a way to cripple gun makers. If this happens, gun makers will go out of business or drive the price of guns up to where they are unaffordable. He said, currently, to apply for a concealed weapon permit, that person has to give the sheriff some kind of credential that they have had adequate training with a firearm. This would help people who have a military record. He said an insufficient reason is not grounds for denial of permit. He said they advise when people fill out the personal reason section that they put "to provide for personal security and comply with state laws". These are the reasons for everyone applying for a concealed weapon permit. He said they also agree with taking the social security number off of the application as it is an invasion of privacy. He said they also agree with the idea of expanding the definition of weapons in schools.

Brian Judy, Montana Members of the National Rifle Assoc., said there are many different provisions in this bill and they support

them. Federal law does provide for state alternatives to the national instant check. He said it is a waste of resources to have to check a person all the time when they purchase a gun. He said the NRA supports the instant check, but the federal government has acted in bad faith in implementing the national instant check system. He said there was to be no fee imposed on law abiding prospective firearm purchasers. The whole idea of the background check is to reduce crime and society should bear the cost, not law abiding citizens trying to purchase firearms. However, the federal government tried to implement a fee and the NRA had to fight extensively to win that argument and this will probably be an annual battle. If there is a state program it could reduce the background checks and those fees. The federal government is also maintaining records on law abiding firearm owners. He said it was clear in the Brady law that records be destroyed immediately on law abiding citizens. If there was a provision in state law that would allow these records to be destroyed the federal government could not be involved. He said the other issue that is important, is prohibiting lawsuits against firearm manufactures by city governments. He said the firearms industry is extraordinarily regulated. He said manufacturers are selling legal products that are beneficial to help reduce crime. He said when firearms are misused by criminals the guns themselves are operating normally. These guns are not defective. Many anti-gun groups are filing lawsuits against the firearms industry to extort money out of the industry and put the firearms industry out of business and raise the price to a point where the average law abiding citizen won't be able to afford them. These lawsuits also displace responsibility. They tell the person that is committing the crime that it is not their fault, it is the gun manufacturer's fault. Many other states have laws concerning these efforts.

A.M. Elwell, Northwest Arms Collectors, said he has lost the sale of several firearms due to the instant criminal background check. This deters people from buying firearms, but not criminals because most of their guns are stolen or bought off the street. He said he would like to be able to see more people be able to buy guns with the least amount of intrusion as possible. He said it is absurd to try and blame an inanimate object for human behavior. A firearm is a mechanical idiot, it has no brain, intent, will or desire.

Tom Farrenkopf, Citizens to Preserve the Second Amendment, rose in support of this bill.

John Appelt, Citizens to Preserve the Second Amendment, said the suing of manufacturers is a vindictive attempt to erode the intent set down by our founding fathers in reference to our

rights under the second amendment. Guns are inanimate objects, it cannot kill anyone on its own.

Kim Liles, Citizens to Preserve the Second Amendment, said as a gun owner it is a shame that they always have to fight to keep their Constitutional rights.

W.C. Hollenbaugh, Self, rose in support of **HB 566**.

Leroy Patterson, Self, said when he was a member of the military they had to fill out a form to provide for the social security number under the privacy act. He said when he went to purchase a handgun, he was told that if he did not provide his social security number, he might not be approved for a handgun. Support of this bill will eliminate a lot of people from having information that they don't need.

Frank Brisendine, Self, rose in support of **HB 566**.

Mike Wallace, Wallace Custom Grips, said he manufactures custom grips mainly for the old single action pistols. He has made grips for many famous people and he didn't think any of those names would be in the newspaper for committing a crime. He said if a crime is committed with a weapon there has to be a thinking person behind that gun. Manufacturers should not be held responsible for someone else's irresponsibility.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. DOHERTY discussed the section on the ability to sue. He asked if this bill would limit in anyway a gun owner or user the ability to sue a firearm manufacturer for a manufacturing defect. **REP. BRAINARD** said that was correct.

REP. DOHERTY asked why should the Legislature tell people in certain communities that they cannot sue a gun manufacturer, etc. **REP. BRAINARD** said he as a taxpayer does not want to see his money used on such frivolous matters. He said this will make the process more stable and responsible.

SEN. DOHERTY asked why not let the local citizen control their local government and determine how their local taxes are going to be paid. **REP. BRAINARD** said local government derives its powers from what the state legislature gives them. It is more responsible for the legislature to take this approach to deal with this.

{Tape : 2; Side : A; Approx. Time Counter : 10:35 a.m.}

SEN. BARTLETT asked if they would object to putting in some type of framework as to how recent the military experience is. **REP.**

BRAINARD said the State of Colorado requires all individuals to go through hunter safety except for individuals over 45 or 50. He said those people that were in WWII are probably more responsible gun handlers than ones in the military currently. He said many people in the military don't have proof that they had the training in the military. This section will provide that if they have been trained in small firearms they will qualify and this will standardize this.

SEN. BARTLETT said within the next few years the Department of Justice will be phasing out the use of social security numbers on driver's license numbers. She asked should they still eliminate the social security number from the application form. **REP.**

BRAINARD said the driver's license number is sufficient identification to purchase a weapon. He said the driver's license number is the number used on a concealed weapon permit.

CHAIRMAN GROSFIELD said he spent a year in Vietnam and he was never trained to have anything to do with handguns. Handguns are a little different in terms of safety training than rifles. He asked why are they changing this on lines 18-19, page 4. **REP.**

BRAINARD said their rules for handling a firearm is no different than a rifle. Hunter safety courses do the same thing. The basic handling of a weapon is important.

{Tape : 2; Side : A; Approx. Time Counter : 10:45 a.m.}

SEN. HALLIGAN said when they don't use a social security number, they get nationwide searches for the wrong guy. He asked how do they do accurate background checks if they don't use the social security number. **REP. BRAINARD** said that is a good point and he is not sure how much the sheriff uses the social security number on a background check. **Mike Batista** said the social security number is a valuable identifier for law enforcement. Social Security ensures that they have the right person when they do a criminal history record check.

SEN. HALLIGAN said this is important that these people are not confused with someone else. **Gary Marbut** said he has discussed this issue with a number of sheriffs and the best identifiers that they use is the name, place, date of birth, and physical description. There are other people using other people's social security numbers.

Closing by Sponsor:

REP. BRAINARD closed on HB 566.

{Tape : 2; Side : A; Approx. Time Counter : 10:50 a.m.}

HEARING ON HJR 5

Sponsor: REP. RICK JORE, HD 73, Ronan

Proponents:

Gary Marbut, MT Shooting Sports Assoc.
Brian Judy, Montana Members of the National Rifle Assoc.
A.M. Elwell, Northwest Arms Collectors
John Dorn, Self
Tom Farrenkopf, Citizens to Preserve the Second Amendment
Kim Liles, Citizens to Preserve the Second Amendment
John Appelt, Citizens to Preserve the Second Amendment
W.C. Hollenbaugh, Self
Frank Brisendine, Self
Leroy Patterson, Self
Allen Lee, Self
Mike Wallace, Wallace Custom Grips

Opponents:

Betty Waddell, MT Assoc. of Churches

Opening Statement by Sponsor:

REP. RICK JORE, HD 73, Ronan, said this bill is a resolution concerning the Brady Law. The Brady Law is not working like it should and is a violation of the Federal and State Constitution. He handed out a sheet on "The Brady Law and Its Aftermath.

EXHIBIT(jus61a04) He also passed out a newspaper article from the *Great Falls Tribune*. **EXHIBIT(jus61a05)** He said he interviewed a sporting goods store in Ronan who said the instant check really was not working so well. They had numerous delays and one individual came in one day and was okay and then two days later came back and he was denied. The cost to do the instant check is around \$13-\$16 per person and this cost will be passed on to the consumer. He read an article from *U.S. Today*, January 21, 1999. He said 13,000 would be purchasers were denied guns, but no arrests had been made. There was no evidence that someone was illegally purchasing a gun, all 13,000 of them could have been legitimate law abiding citizens.

Proponents' Testimony:

Gary Marbut, MT Shooting Sports Assoc., said the Brady Law is not really consistent with the culture in Montana to have to do background checks to buy a gun. This legislation is designed for places that have different kinds of people and problems than they do in Montana. However, because it is federal law it is imposed on Montanans, even though it is not needed. Montana ought to tell Congress that this law is not consistent with their culture. The Brady Law is not being used to go after criminals it is only inconveniencing a lot of law abiding gun owners.

Brian Judy, Montana Members of the National Rifle Assoc. said the provisions of the original Brady bill with the waiting period was clearly an infringement on the right to keep and bear arms. So they created the instant check system with no delay, fees or registration. But this law is being implemented in bad faith on the part of Federal Government. They have had to oppose fee legislation and probably will every year. And records are being maintained on law abiding citizens who are trying to purchase firearms. The law is not being implemented as it was intended to do and Montana should go on record of wanting to repeal the Brady Law.

A.M. Elwell, Northwest Arms Collectors, said the idea of the Brady Law was to deter crime. He said the Brady Law is not working properly and if it ain't broke don't fix it. And if it is broke, fix it or put it in a garage sale.

John Dorn, Self, said any police officer will say that gun control doesn't work and nobody can protect a person completely. The instant check was supposed to prevent crime, but has not done so. It is an infringement of peoples rights. He said if someone has had a gun in their family for 200 years and they bring it to be fixed, when they go to pick it up they have to have an instant check and they may not get it back. He said they change forms two or three times a year for people to go through the instant check and most of those records are being kept when they should be destroyed. He said when people go to a foreign county, they confiscate all firearms and that leaves the bad guys and supposedly the good guys with firearms and the average citizen with nothing. He said it is not good for government to make rules for all parts of the country.

{Tape : 2; Side : A; Approx. Time Counter : 11:14 a.m.}

Tom Farrenkopf, Citizens to Preserve the Second Amendment, said many state legislatures and our federal government don't know what the word "no" or "infringement" means. He said he gave up a

day's labor to exercise his liberty by testifying on this bill. The price of liberty isn't cheap. He said he has traveled on his own time and with his own money, extensively discussing this matter and opposing the fees that the federal government wants to impose with the instant check system. He said they don't have the instant check to buy a car. He said there are those who would deny us any of our liberties. He said it was the Brady law that was a catalyst to the right to preserve the second amendment. He said he just traded a 1956 Dodge Pickup truck for a beautiful rifle. He said there was no instant check and that is the way people do business. He said forbid anyone who wants to stand in the way of people's God given right for their liberty. He said only free men exercise their liberties in a peaceful manner.

Kim Liles, Citizens to Preserve the Second Amendment, said they share concern over the constitutionality of the Brady Law. The Supreme Court has found certain portions of the Brady Law to be unconstitutional. He said little pieces of our freedom are slowly being taken away.

John Appelt, Citizens to Preserve the Second Amendment, said their organization was started because of the passage of the Brady bill. He said at their first meeting they had over 300 people and they have met monthly and bi-monthly for the past five years. There is a grave concern in their community about the erosion of their constitutional rights. The Brady bill is unnecessary, unreasonable and unwanted.

W.C. Hollenbaugh, Self, urged support of **HJR 5**.

Frank Brisendine, Self, said three weeks ago he went to buy a .22 rifle for his son's birthday and was declined. He is not a felon, and has done nothing wrong. He had to call his cousin who is a U.S. marshal to get it straightened out and to be able to get the gun. He said if he didn't have a cousin that was a U.S. marshal he might not have been able to get the gun.

Leroy Patterson, Self, said the Legislature needs to decide what parts of the Constitution they are going to uphold and what parts they are not going to uphold. Washington needs a strong message that the Constitution is there to uphold.

{Tape : 2; Side : B; Approx. Time Counter : 11:27 a.m.}

Allen Lee, Self, rose in support of **HJR 5**.

Mike Wallace, Wallace Custom Grips, said criminals don't abide by the Brady Law and it is the good people that are affected.

Opponents' Testimony:

Betty Waddell, MT Assoc. of Churches, read the firearms section from a position paper on Violence in Society. **EXHIBIT(jus61a06)** She also handed out regulations on Teddy Bears and that they have more regulations than guns. She also had a graph on firearm deaths. **EXHIBIT(jus61a07)** She said they are extremely concerned about the use of all firearms in the U.S. and it's a problem that needs to be looked at. She said before the Brady Bill, she used to work in Texas at a mental institution as a psychology intern. She worked with a psychologist who took care of 600 inmates. She said on one particular day an inmate asked to have a pass to go downtown for a couple of hours. The psychiatrist let him go and the inmate went to a pawn shop and bought a gun and came back and shot the psychiatrist and then himself. She said it is critical that they have some sort of regulation on the way they go about buying guns.

{Tape : 2; Side : B; Approx. Time Counter : 11:40 a.m.}

Questions from Committee Members and Responses:

SEN. HOLDEN said Jewish American Communities are now becoming one of the largest activists on the right to keep and bear arms. Why is this happening. **Gary Marbut** said this is a group of people who are thinking back to the time preceding the holocaust when Nazi Germany passed laws to disarm Jewish citizens. The Jews being good law abiding citizens went and turned all of their guns in and then they were taken to concentration camps and they had no way to resist. They are very concerned about people who are advocating gun control in America that they are setting the stage for the same kind of holocaust that happened during WWII.

SEN. DOHERTY asked if the NRA was in favor of the Brady law with the instant check, etc. **Brian Judy** said the NRA years ago adopted a position of support for the instant check system. But it was based on that it be instant and not used as a vehicle to tax firearm purchasers and the copulation of information of law abiding people. However, it is not instant, they are trying to impose fees, and the Federal Government is making records on law abiding firearm owners.

SEN. DOHERTY said if those items of concern were taken care of, would the NRA support the Brady Law. **Brian Judy** said yes.

SEN. HALLIGAN said when the Brady Law was being talked about was it ever attempted to be an opt in for the states. The states have rights and let them decide if they want to be a part of the Brady Law or not. **Brian Judy** said yes there were many alternatives

looked at. The Brady bill was inevitable and the instant check was a way to help curb the opposition and make it more constitutionally correct.

SEN. HALLIGAN asked if the Brady law is repealed in this state would they have more situations of the mental health patient buying a gun and causing violence, etc. **REP. JORE** said the mental health person would have to have some type of record to even show up on the instant check system. Being mentally ill would probably not show up on a list to be able to buy a gun. **John Appelt** said this man should of never been let out in the first place. **John Dorn** said since 1968 people have had to fill out forms and they could fill in false information about being a drug addict, a mental patient, etc. There are mistakes made with the instant check and this is why innocent people are denied the purchase of a gun.

CHAIRMAN GROSFIELD asked why doesn't this resolution ask for an opt-out rather than repealing the Brady Law. **REP. JORE** said that is a good thought. But there was a lot of controversy in the ranks of the NRA and some had to give up something to get other things. The Constitution means what it says and Montana needs to make a statement rather than just dealing with a compromise.

CHAIRMAN GROSFIELD asked what page 2, line 15 means? **REP. JORE** said belligerent came from a concept expressed by the Supreme Court regarding individuals claiming their rights. **Gary Marbut** said that concept has been used by Supreme Court and in order for a claimant to benefit from their rights they need to be a "belligerent claimant of their rights."

CHAIRMAN GROSFIELD asked on page 2, line 16, how does this apply here. **REP. JORE** said there were some states that were admitted to the U.S. after the Constitution was admitted under the equal footing doctrine. He said he is using that in the conquering of the perspective of the restriction on the Federal Government particularly the second and tenth amendments of the Constitution. **Gary Marbut** said the equal footing doctrine suggests that Montana should benefit from those restrictions on the Bill of Rights the same way they were understood at the time they were adopted by the agreement of the colonies.

CHAIRMAN GROSFIELD said it could also be construed to say that under the equal footing doctrine that the Brady bill if it is going to apply anywhere it better apply everywhere. **Gary Marbut** said that is the position of the Federal Government. The Brady Law was basically imposed by those states that already had a waiting period of more than five days.

CHAIRMAN GROSFIELD asked if there is a realistic opportunity that Congress may repeal the Brady Law with so many people complaining about this. **Gary Marbut** said he would be in favor of getting rid of the Brady Bill or opting out.

Closing by Sponsor:

REP. JORE said he is a Christian and he believes in the commandment that "though shall not kill." And yet people still kill each other. He said when they deprive a person of self-preservation and take away their opportunity by the force of law to protect themselves that is a serious issue. Individuals are buying guns at higher numbers to protect themselves from chaos in society. No matter how much power they give government there is always going to be chaos in our society. He read part of a resolution that Thomas Jefferson wrote in 1825. He was protesting the Federal Government's involvement on building roads and canals and other improvements in the states. Thomas Jefferson said one of the greatest calamities that could befall our society is the submission to a government of unlimited powers. He said it is our duty to keep the Federal Government in check when dealing with Constitutional issues.

ADJOURNMENT

Adjournment: 12:00 P.M.

SEN. LORENTS GROSFIELD, Chairman

JODI PAULEY, Secretary

LG/JP

EXHIBIT (jus61aad)